

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:20-cv-02283-LJL**

The Legal Aid Society v. United States Department of Housing
and Urban Development

Assigned to: Judge Lewis J. Liman

Related Case: 1:20-cv-04859-LJL

Cause: 05:552 Freedom of Information Act

Date Filed: 03/13/2020

Jury Demand: Plaintiff

Nature of Suit: 890 Other Statutory
Actions

Jurisdiction: Federal Question

Plaintiff

The Legal Aid Society

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Date Filed	#	Docket Text
03/13/2020	<u>1</u>	COMPLAINT against United States Department of Housing and Urban Development. (Filing Fee \$ 400.00, Receipt Number ANYSDC–19110031) Document filed by The Legal Aid Society. (Attachments: # <u>1</u> Exhibit A – Assignment of Rights to Legal Aid, # <u>2</u> Exhibit B – HUD's Proposed Rule, # <u>3</u> Exhibit C – The FOIA Request, # <u>4</u> Exhibit D – HUD's Acknowledgment Letter, # <u>5</u> Exhibit E – Emails between Winston & Strawn & HUD).(Kessler, Jeffrey) (Entered: 03/13/2020)
03/13/2020	<u>2</u>	CIVIL COVER SHEET filed..(Kessler, Jeffrey) (Entered: 03/13/2020)
03/13/2020	<u>3</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by The Legal Aid Society..(Kessler, Jeffrey) (Entered: 03/13/2020)
03/13/2020	<u>4</u>	REQUEST FOR ISSUANCE OF SUMMONS as to United States Department of Housing and Urban Development, re: <u>1</u> Complaint,. Document filed by The Legal Aid Society..(Kessler, Jeffrey) (Entered: 03/13/2020)
03/16/2020		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above–entitled action is assigned to Judge Lewis J. Liman. Please download and review the Individual Practices of the assigned District Judge, located at https://nysd.uscourts.gov/judges/district-judges . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at https://nysd.uscourts.gov/rules/ecf-related-instructions ..(pc) (Entered: 03/16/2020)
03/16/2020		Magistrate Judge Gabriel W. Gorenstein is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (pc) (Entered: 03/16/2020)
03/16/2020		Case Designated ECF. (pc) (Entered: 03/16/2020)
03/16/2020	<u>5</u>	ELECTRONIC SUMMONS ISSUED as to United States Department of Housing and Urban Development..(pc) (Entered: 03/16/2020)
03/16/2020	<u>6</u>	ORDER: This case has been assigned to me for all purposes. IT IS HEREBY ORDERED that all counsel appear for a telephonic status conference on March 24, 2020 at 10:30 a.m. Counsel are directed to call (888)251–2909 and use access code 2123101. Counsel for Plaintiff is ordered to notify Defendant of this order. SO ORDERED. (Signed by Judge Lewis J. Liman on 3/16/2020) (va) (Entered: 03/16/2020)
03/16/2020		Set/Reset Hearings: Telephone Conference set for 3/24/2020 at 10:30 AM before Judge Lewis J. Liman. (va) (Entered: 03/16/2020)

03/16/2020	<u>7</u>	NOTICE OF APPEARANCE by Jeffrey J. Amato on behalf of The Legal Aid Society..(Amato, Jeffrey) (Entered: 03/16/2020)
03/16/2020	<u>8</u>	NOTICE OF APPEARANCE by Kerry Donovan on behalf of The Legal Aid Society..(Donovan, Kerry) (Entered: 03/16/2020)
03/23/2020	<u>9</u>	NOTICE OF APPEARANCE by Kirti Vaidya Reddy on behalf of United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 03/23/2020)
03/24/2020	<u>10</u>	NOTICE OF APPEARANCE by Jay Wexler on behalf of The Legal Aid Society..(Wexler, Jay) (Entered: 03/24/2020)
03/24/2020	<u>11</u>	ORDER: As discussed at the teleconference this morning: IT IS HEREBY NOTED that service is deemed accepted by Defendant. Defendant's time to answer or otherwise respond to the Complaint shall run from this date. IT IS HEREBY ORDERED for all counsel to appear for a telephonic status conference on April 8, 2020 at 10:00 a.m. Counsel are directed to call (888) 251-2909 and use access code 2123101. SO ORDERED. (Telephone Conference set for 4/8/2020 at 10:00 AM before Judge Lewis J. Liman.) (Signed by Judge Lewis J. Liman on 3/24/2020) (va) (Entered: 03/24/2020)
03/24/2020		Minute Entry for proceedings held before Judge Lewis J. Liman: Telephonic Status Conference held on 3/24/2020. Jeffrey Kessler, Kerry Donovan, Jeffrey Amato, and Jay Wexler present by telephone for Plaintiff. Kirti Reddy present by telephone for Defendant. (mf) (Entered: 04/08/2020)
04/08/2020	<u>12</u>	ORDER: IT IS HEREBY ORDERED that a telephonic status conference is SET for May 6, 2020 at 4:00 p.m. The parties are directed to call (888) 251-2909 and use access code 2123101. In advance of that conference, the parties are ORDERED to meet and confer with respect to (1) a briefing schedule for any motion to dismiss; and (2) to the extent any categories of document production will not be the subject of a motion to dismiss or the Government will not make a motion to dismiss, a schedule for production of those categories of documents. SO ORDERED. (Telephone Conference set for 5/6/2020 at 04:00 PM before Judge Lewis J. Liman.) (Signed by Judge Lewis J. Liman on 4/8/2020) (va) (Entered: 04/08/2020)
04/08/2020		Minute Entry for proceedings held before Judge Lewis J. Liman: Telephonic Status Conference held on 4/8/2020. Jeffrey Kessler, Kerry Donovan, Jeffrey Amato, and Jay Wexler present by telephone for Plaintiff. Kirti Reddy present by telephone for Defendant. Court reporter present. Next telephonic status conference set for May 6, 2020 at 4:00PM before Judge Lewis J. Liman. Parties are directed to follow the previous dial-in teleconference instructions. (mf) (Entered: 04/08/2020)
04/23/2020	<u>13</u>	ANSWER to <u>1</u> Complaint,. Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 04/23/2020)
05/05/2020	<u>14</u>	LETTER addressed to Judge Lewis J. Liman from Jeffrey L. Kessler dated May 5, 2020 re: status update on discussions between the parties relating to the production of documents responsive to Plaintiff's FOIA request. Document filed by The Legal Aid Society..(Kessler, Jeffrey) (Entered: 05/05/2020)
05/06/2020	<u>15</u>	LETTER addressed to Judge Lewis J. Liman from Kirti Reddy dated May 6, 2020 re: status. Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 05/06/2020)
05/06/2020	<u>16</u>	ORDER: As discussed at the status conference today, IT IS HEREBY ORDERED for all counsel to appear for a telephonic status conference on May 15, 2020 at 11:30 a.m. Counsel are directed to call (888) 251-2909 and use access code 2123101. (Telephone Conference set for 5/15/2020 at 11:30 AM before Judge Lewis J. Liman.) (Signed by Judge Lewis J. Liman on 5/6/2020) (jwh) (Entered: 05/06/2020)
05/06/2020		Minute Entry for proceedings held before Judge Lewis J. Liman: Telephonic Status Conference held on 5/6/2020. Jeffrey Kessler, Kerry Donovan, and Jeffrey Amato present by telephone for Plaintiff. Kirti Reddy present by telephone for Defendant. Court reporter present. (mf) (Entered: 05/20/2020)
05/12/2020	<u>17</u>	TRANSCRIPT of Proceedings re: CONFERENCE held on 5/6/2020 before Judge Lewis J. Liman. Court Reporter/Transcriber: Eve Giniger, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court

		Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/2/2020. Redacted Transcript Deadline set for 6/12/2020. Release of Transcript Restriction set for 8/10/2020..(McGuirk, Kelly) (Entered: 05/12/2020)
05/12/2020	<u>18</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 5/5/2020 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days....(McGuirk, Kelly) (Entered: 05/12/2020)
05/14/2020	<u>19</u>	LETTER addressed to Judge Lewis J. Liman from Kirti Reddy dated May 14, 2020 re: status. Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 05/14/2020)
05/14/2020	<u>20</u>	LETTER addressed to Judge Lewis J. Liman from Jeffrey L. Kessler dated May 14, 2020 re: Status update pursuant to Court's request during the May 6, 2020 status conference. Document filed by The Legal Aid Society. (Attachments: # <u>1</u> Exhibit A – Fee Waiver Application).(Kessler, Jeffrey) (Entered: 05/14/2020)
05/15/2020	<u>21</u>	ORDER: The following is HEREBY ORDERED: 1. On the day the United States Department of Housing and Urban Development ("HUD") makes its determination with respect to Plaintiff's fee waiver request, counsel for HUD shall file a letter electronically on ECF advising the Court that a decision has been made and attaching a copy of that decision. 2. The Government represented that a decision on Plaintiff's fee waiver request will be made and conveyed no later than May 27, 2020. Accordingly, by no later than 5:00 p.m. on May 29, 2020 or 5:00 p.m. two business days after HUD makes its decision on the fee waiver whichever is earlier Plaintiff shall submit a letter-brief setting forth any arguments for the Court to consider with respect to HUD's decision and any relief requested with respect to that issue. No later than 5:00 p.m. three business days following Plaintiff's submission, HUD shall file an opposition. No later than two business days following the submission of HUD's opposition, Plaintiff shall file a reply. 3. A telephonic status conference and argument with respect to the issue of the fee waiver request is SET for June 8, 2020 at 3:00 p.m. Parties are directed to call (888) 251-2909 and use access code 2123101. 4. The Government represented that HUD would complete the review of 8,000 documents reflecting communications between HUD and the White House by June 12, 2020, but that it could not commit to a date for the production of those documents or any documents exchanged with the White House because the documents required review for executive privilege and HUD had no control over when the White House would review the documents. The Government has the right to withhold documents subject to a valid claim of executive privilege, but the Government here seems to be claiming that it has an open-ended right to defer production of documents until whenever the White House decides to undertake and complete the executive privilege review. The Court needs legal briefing on this issue. Accordingly, by no later than 5:00 p.m. on May 20, 2020, the parties shall submit letter-briefs addressed to the question whether the Court may order an agency sued under FOIA for its failure to timely respond to a FOIA request to produce responsive documents responsive to a FOIA request by a date certain notwithstanding that the documents must, before production, undergo executive privilege review with the White House. The question, in effect, asks whether a court may impose a time limit on executive privilege review. 5. The Government also and separately represented that it would not be able to review and process the remaining 2,000 or so HUD-White House documents during the period from approximately June 12, 2020, to July 15, 2020, because of a migration of its review platform from one system to another. In addition, the Government represented that during that migration from one platform to another, HUD would cease the review of any documents requested pursuant to FOIA by any requestor for a period of at least one month (and perhaps longer depending on the time the migration takes). Accordingly, the letter briefs to be submitted by no later than 5:00 p.m. on May 20, 2020 shall also address the question whether it is lawful for an agency subject to FOIA to cease its review and production of all documents required to be produced pursuant to FOIA for a period of a month or longer. 6. No later than 5:00 pm. on May 20, 2020, counsel for HUD shall submit a particularized affidavit, or affidavits, from someone or persons with

		knowledge, supporting the proposition that approximately 2,000 documents relating to HUD communications with the White House cannot be reviewed by June 12, 2020 without causing technological system shut-down. SO ORDERED. (Telephone Conference set for 6/8/2020 at 03:00 PM before Judge Lewis J. Liman.) (Signed by Judge Lewis J. Liman on 5/15/2020) (va) (Entered: 05/15/2020)
05/15/2020		Minute Entry for proceedings held before Judge Lewis J. Liman: Telephonic Status Conference held on 5/15/2020. Jeffrey Kessler, Kerry Donovan, Jeffrey Amato, and Jay Wexler present by telephone for Plaintiff. Kirti Reddy present by telephone for Defendant. Court reporter present by telephone. (mf) (Entered: 05/29/2020)
05/18/2020	<u>22</u>	NOTICE OF APPEARANCE by Mohammad Basim Pathan on behalf of The Legal Aid Society..(Pathan, Mohammad) (Entered: 05/18/2020)
05/20/2020	<u>23</u>	LETTER addressed to Judge Lewis J. Liman from Jeffrey L. Kessler dated May 20, 2020 re: Court's May 15, 2020 Order. Document filed by The Legal Aid Society. (Attachments: # <u>1</u> Exhibit A – Freedom of Information Act Request, # <u>2</u> Exhibit B – May 15, 2020 Conf. Tr. excerpt).(Kessler, Jeffrey) (Entered: 05/20/2020)
05/20/2020	<u>24</u>	LETTER addressed to Judge Lewis J. Liman from Kirti Reddy dated May 20, 2020 re: May 15, 2020 conference. Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 05/20/2020)
05/20/2020	<u>25</u>	DECLARATION of Nina Aten re: <u>24</u> Letter . Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 05/20/2020)
05/20/2020	<u>26</u>	DECLARATION of Dane Narode re: <u>24</u> Letter . Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 05/20/2020)
05/21/2020	<u>27</u>	ORDER: The parties are HEREBY ORDERED to meet and confer today on the issues presented therein, including the compromise offered by the Government at the bottom of page 5 of its letter. IT IS FURTHER ORDERED that Plaintiff shall submit a reply to the Government's letter and factual submissions no later than 5:00 p.m. tomorrow. (Signed by Judge Lewis J. Liman on 5/21/2020) (rj) (Entered: 05/21/2020)
05/22/2020	<u>28</u>	TRANSCRIPT of Proceedings re: conference held on 4/8/2020 before Judge Lewis J. Liman. Court Reporter/Transcriber: Raquel Robles, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/12/2020. Redacted Transcript Deadline set for 6/22/2020. Release of Transcript Restriction set for 8/20/2020..(McGuirk, Kelly) (Entered: 05/22/2020)
05/22/2020	<u>29</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 4/8/2020 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days....(McGuirk, Kelly) (Entered: 05/22/2020)
05/22/2020	<u>30</u>	CONSENT LETTER MOTION for Extension of Time to File Response/Reply as to <u>26</u> Declaration, <u>24</u> Letter, <u>25</u> Declaration addressed to Judge Lewis J. Liman from Mohammad B. Pathan dated May 22, 2020. Document filed by The Legal Aid Society..(Pathan, Mohammad) (Entered: 05/22/2020)
05/22/2020	31	ORDER granting <u>30</u> Letter Motion for Extension of Time to File Response/Reply (HEREBY ORDERED by Judge Lewis J. Liman)(Text Only Order) (MM) (Entered: 05/22/2020)
05/26/2020	<u>32</u>	LETTER addressed to Judge Lewis J. Liman from Jeffrey L. Kessler dated May 26, 2020 re: Court's May 21, 2020 Order. Document filed by The Legal Aid Society..(Kessler, Jeffrey) (Entered: 05/26/2020)
05/27/2020	<u>33</u>	MEMO ENDORSEMENT on re: <u>32</u> Letter filed by The Legal Aid Society. ENDORSEMENT: Plaintiff's application to update the Court by May 29, 2020 is GRANTED. No later than 4:00 p.m. on May 29, 2020, the parties shall file the terms of a production agreement or inform the Court of their inability to reach an agreement.

		(Signed by Judge Lewis J. Liman on 5/27/2020) (mro) (Entered: 05/27/2020)
05/27/2020	<u>34</u>	LETTER addressed to Judge Lewis J. Liman from Kirti Vaidya Reddy dated May 27, 2020 re: Decision on Plaintiff's Fee Waiver Request. Document filed by United States Department of Housing and Urban Development. (Attachments: # <u>1</u> Exhibit A (decision)).(Reddy, Kirti) (Entered: 05/27/2020)
05/28/2020	<u>35</u>	NOTICE of Administrative Record Pertaining to Fee Waiver Decision re: <u>34</u> Letter,. Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 05/28/2020)
05/29/2020	<u>36</u>	NOTICE OF APPEARANCE by Christine Schessler Poscablo on behalf of United States Department of Housing and Urban Development..(Poscablo, Christine) (Entered: 05/29/2020)
05/29/2020	<u>37</u>	JOINT LETTER addressed to Judge Lewis J. Liman from Kirti Reddy dated May 29, 2020 re: proposed schedule. Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 05/29/2020)
05/29/2020	<u>38</u>	LETTER addressed to Judge Lewis J. Liman from Jeffrey L. Kessler dated May 29, 2020 re: Court Order of May 15, 2020. Document filed by The Legal Aid Society. (Attachments: # <u>1</u> Exhibit 1 – May 6th Court Conference Transcript, # <u>2</u> Exhibit 2 – May 15th Court Conference Transcript).(Kessler, Jeffrey) (Entered: 05/29/2020)
05/29/2020	<u>39</u>	DECLARATION of Judith Goldiner in Support re: <u>38</u> Letter,. Document filed by The Legal Aid Society. (Attachments: # <u>1</u> Exhibit A – Chart of Legal Aid Impact Class Action Cases, # <u>2</u> Exhibit B – Legal Aid FOIA Request to Department of State, # <u>3</u> Exhibit C – Legal Aid FOIA Request to HHS, # <u>4</u> Exhibit D – Legal Aid FOIA Request to OMB, # <u>5</u> Exhibit E – Legal Aid FOIA Request, # <u>6</u> Exhibit F – Initial HUD Email on Search Fees, # <u>7</u> Exhibit G – Fee Waiver Application, # <u>8</u> Exhibit H – HUD and Legal Aid Agreement to Waive Administrative Appeals Process, # <u>9</u> Exhibit I – HUD Denial Letter, # <u>10</u> Exhibit J – Legal Aid Comments on the Proposed Rule).(Kessler, Jeffrey) (Entered: 05/29/2020)
05/29/2020	<u>40</u>	MEMO ENDORSEMENT on re: <u>37</u> Letter filed by United States Department of Housing and Urban Development. ENDORSEMENT: SO ORDERED. IT IS FURTHER ORDERED that the parties shall appear for a telephonic status conference on July 16, 2020 at 12:00 p.m. Parties are directed to call (888) 251-2909 and use access code 2123101. (Telephone Conference set for 7/16/2020 at 12:00 PM before Judge Lewis J. Liman.) (Signed by Judge Lewis J. Liman on 5/29/2020) (va) (Entered: 05/29/2020)
06/03/2020	<u>41</u>	JOINT LETTER MOTION for Extension of Time addressed to Judge Lewis J. Liman from Kirti Reddy. Document filed by United States Department of Housing and Urban Development..(Reddy, Kirti) (Entered: 06/03/2020)
06/03/2020	<u>42</u>	ORDER granting <u>41</u> Letter Motion for Extension of Time. SO ORDERED. (Signed by Judge Lewis J. Liman on 6/3/2020) (va) (Entered: 06/03/2020)
06/04/2020	<u>43</u>	PROPOSED STIPULATION AND ORDER. Document filed by United States Department of Housing and Urban Development..(Poscablo, Christine) (Entered: 06/04/2020)
06/05/2020	<u>44</u>	STIPULATION AND ORDER: IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the parties, that HUD will grant Legal Aid a fee waiver in connection with the FOIA Request for the following categories of documents set forth herein under the terms and conditions set forth herein: (As further set forth herein this Stipulation.) SO ORDERED. The conference previously set for June 8, 2020 is CANCELLED. (Signed by Judge Lewis J. Liman on 6/5/2020) (va) (Entered: 06/05/2020)
06/29/2020		Set/Reset Hearings: Telephone Conference set for 7/16/2020 at 12:00 PM before Judge Lewis J. Liman. (va) (Entered: 06/29/2020)
07/04/2020	<u>45</u>	ENDORSED LETTER addressed to Judge Lewis J. Liman from Christine S. Poscablo dated June 30, 2020 re: letter requesting to adjourn conference. ENDORSEMENT: Having considered the Government's application and Plaintiff's response, the Court affirms its prior conclusion that this case is related to 20-cv-2283 The Legal Aid

		<p>Society v. United States Department of Housing and Urban Development and the Court's acceptance of the assignment of this case on that basis. The parties in this case shall appear for a telephonic conference on July 8, 2020 at 6:30 p.m. They are directed to call (888) 251-2909 and use access code 2123101.., (Signed by Judge Lewis J. Liman on 7/4/2020) (Telephone Conference set for 7/8/2020 at 06:30 PM before Judge Lewis J. Liman.) (ks) (Entered: 07/06/2020)</p>
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